

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Pride Radio Licensee, Inc.	)	File No. EB-00-CG-054
WJTW	)	
Joliet, Illinois	)	NAL/Acct. No. X3232003

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: April 19, 2000**

By the District Director, Chicago, Illinois, Field Office, Enforcement Bureau:

**I. Introduction**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Pride Radio Licensee, Inc. (“Pride Radio”), licensee of WJTW, Joliet, Illinois, has apparently violated Sections 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(ii)(A) of the Commission’s Rules (the “Rules”).<sup>1</sup> The violations include failure to have operational Emergency Alert System (“EAS”) equipment and failure to conduct and log required EAS tests. We conclude that Pride Radio is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. Background**

2. On December 21, 1999, an agent from the Commission’s Chicago, Illinois Field Office (“Chicago Field Office”) inspected radio station WJTW, Joliet, Illinois, to verify compliance with the Commission’s EAS requirements. The agent’s inspection of WJTW’s station log revealed WJTW:

- (a) did not have fully operational EAS equipment and was unable to reliably monitor EAS transmissions; WJTW failed to receive and log required EAS tests for the periods 5/16/99–5/22/99, 6/13/99-7/17/99, 8/8/99-9/18/99, 10/17/99-10/23/99, and 11/21/99–12/18/99;
- (b) failed to transmit and log required weekly EAS tests for the periods 5/23/99-5/29/99, 6/6/99-7/24/99, 8/22/99-8/28/99, 9/5/99-9/25/99, and 11/21/99-12/4/99; and
- (c) did not conduct and log the required monthly EAS tests on July 6, 1999, September 7, 1999, and December 7, 1999 in accordance with the Illinois State Plan.

3. On January 11, 2000, the District Director of the Chicago Field Office issued an Official Notice of Violation (“NOV”) to WJTW for the violations the agent found during the December 21, 1999 inspection. The District Director cited WJTW for non-compliance with Sections 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(ii)(A) of the Rules.

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<sup>1</sup> 47 C.F.R. §§ 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(ii)(A).

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4. On January 24, 2000, the Chicago Field Office received a response from Pride Radio dated January 24, 2000. Pride Radio acknowledged in its response that it had failed to comply with the FCC's EAS requirements, but detailed corrective steps that it had taken to eliminate the violations (e.g., installing new EAS equipment).

### III. Discussion

5. Section 11.35(a) of the Rules<sup>2</sup> requires broadcast stations to have EAS equipment installed so that the monitoring and transmitting functions are available during times the station and systems are in operation. The station must also determine the cause of any failure to receive the required tests or activations and make appropriate entries in its station log. During the December 21, 1999 inspection, the agent found that WJTW did not have fully operational EAS equipment installed that was able to consistently receive required EAS tests as noted in paragraph 2(a). Furthermore, WJTW did not determine and make the appropriate entries detailing the cause of any failure to receive the required tests in its station log.

6. Section 11.61(a)(1)(v) of the Rules<sup>3</sup> requires broadcast stations to conduct and log monthly tests of the EAS. The State of Illinois EAS Plan, developed by the State Emergency Communications Committee, specifies that the monthly EAS tests will be performed on the first Tuesday of each month at 10:15 a.m. The agent found that Pride Radio did not transmit and log the required monthly tests on July 6, 1999, September 7, 1999, or December 7, 1999 in accordance with the Illinois State Plan.

7. Section 11.61(a)(2)(ii)(A) of the Rules<sup>4</sup> requires broadcast stations to conduct tests at least once a week at random days and times. During the December 21, 1999 inspection, the agent found that WJTW did not transmit and log its weekly random EAS tests as noted in paragraph 2(b).

8. Based on the evidence before us, we find that Pride Radio willfully<sup>5</sup> and repeatedly<sup>6</sup> violated Sections 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(ii)(A) of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("Policy Statement"), sets the base amount for failure to have EAS equipment installed and operational at eight thousand dollars (\$8,000). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("the Act"),<sup>7</sup> that include the nature, circumstances, extent and

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<sup>2</sup> 47 C.F.R. § 11.35(a).

<sup>3</sup> 47 C.F.R. § 11.61(a)(1)(v).

<sup>4</sup> 47 C.F.R. § 11.61(a)(2) (ii)(A).

<sup>5</sup> Section 312(f)(1), which also applies to Section 503(b), provides: [t]he term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>6</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

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gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture of four thousand dollars (\$4,000) is warranted for the violations. WJTW's equipment worked on a periodic basis and WJTW did transmit some of the required weekly and monthly tests.

**IV. ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>9</sup> Pride Radio Licensee, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for failure to maintain operational EAS equipment and for failing to conduct and log the required monthly and weekly tests of EAS, in violation of Sections 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(ii)(A) of the Rules.<sup>10</sup>

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>11</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Pride Radio Licensee, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3232003.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. X3232003.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C.

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<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>10</sup> 47 C.F.R. §§ 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(ii)(A).

<sup>11</sup> 47 C.F.R. § 1.80.

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15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Fletcher, Heald & Hildreth, P.L.C. Attorneys at Law, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209-3801. A copy shall be sent, by first class mail, to Pride Radio Licensee, Inc., 8800 Route 14, Crystal Lake, Illinois 60012.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt  
District Director  
Chicago, Illinois Field Office  
Enforcement Bureau

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<sup>12</sup> See 47 C.F.R. § 1.1914.